

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5263 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MOHAMED SADIK GULAMHUSEN SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner
Shri Kamal Mehta, AGP for the respondents

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 06/11/96

ORAL JUDGEMENT

By way of this Special Civil Application the petitioner has challenged the order of detention dated 12th July 1996 passed by the Commissioner of Police, Ahmedabad City, under the provisions of Gujarat Anti Social Activities (Prevention) Act, 1985, (hereinafter referred to as "PASA Act" for brevity). It is alleged in the grounds of detention of the petitioner-detenu that the petitioner-detenu is a dangerous person within the

meaning of section 2(c) of the PASA Act. Reference has been made to C.R. No.47/94 registered at Shahpur Police Station, Ahmedabad. The detaining authority has also relied upon the statement of 4 witnesses wherein privilege under section 9(2) of the PASA Act has been claimed and an unregistered incident has also been narrated in the aforesaid statement.

2. The Commissioner of Police, Ahmedabad City has filed an affidavit stating that a criminal case has been registered against the petitioner being Criminal Case No.47/94, under sections 365, 367, 368, 325, 470, 471 and 114 of Indian Penal Code; under sec.25(1)(a)(b) of the Arms Act; under sec.135 of Customs Act and also sec.12 of the Passport Act. It has also been alleged that the petitioner has been involved in criminal activities of possession of revolver, creating atmosphere of terror and violating the public order. It is further alleged that the petitioner is a headstrong man. Shri A.S. Dave, learned counsel for the petitioner contends that a solitary incident will not be sufficient to conclude that the detenu was habitually committing offences or attempting or abetting the commission of offence. He further submits that some vague allegations have been made against the petitioner.

3. This application is being opposed by Shri Kamal Mehta, learned AGP for the respondents. He submits that the grounds of detention clearly indicate that the petitioner belongs to a notorious gang and he is a dangerous person. As such it is essential to detain such a person.

4. With the assistance of the learned counsel I have perused the material on record. It is now well settled that in order to bring a person within the expression of 'dangerous person' as defined under clause (c) of sec.3 of the PASA Act, there shall be positive material to indicate that such person is habitually committing or attempted to commit or abetted to commission of offence which is punishable under Chapter XVI or XVII of Indian Penal Code or under Chapter V of the Arms Act and that a single or isolated act of falling under Chapter XVI or XVII of the Indian Penal Code or Chapter V of the Arms Act cannot be said to be a habitual act as referred to in section 2 (c) of PASA Act. Reference may be made to the decision of the Apex Court in *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police and others*, (1995) 3 SCC 237 and *Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City and another*, AIR 1989 SC 491. Having considered the material on record,

in my view there is no material on the basis of which it can be concluded that the petitioner is a dangerous person within the meaning of section 2(c) of the PASA Act. The single incident referred to in the grounds of detention is not sufficient to draw any inference or to conclude that the petitioner is a dangerous persons. Thus, in my view the order of detention is illegal and deserves to to be quashed and set aside.

5. In view of the aforesaid this Special Civil Application is allowed. The order of detention dated 12th July 1996 is quashed and set aside. It is directed that the petitioner shall be released forthwith, if he is not required in any other case. Rule is made absolute.

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